FILED BY CLERK
FEB -1 2011
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

| | |
|---|---|
| JENNIFER W., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, TERESA W., and STEVIE W., Appellees. | 2 CA-JV 2010-0059<br>DEPARTMENT B<br><br>MEMORANDUM DECISION<br>Not for Publication<br>Rule 28, Rules of Civil Appellate Procedure |

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J17506900

Honorable Kathleen A. Quigley, Judge Pro Tempore

AFFIRMED

---

Nuccio & Shirly, P.C.
By Jeanne Shirly
Tucson
Attorneys for Appellant

Thomas C. Horne, Arizona Attorney General
By Claudia Acosta Collings
Tucson
Attorneys for Appellee Arizona
Department of Economic Security

---

E C K E R S T R O M, Judge.

**¶1** Appellant Jennifer W. appeals the juvenile court's order terminating her parental rights to her daughters Teresa, born in 2006, and Stevie, born in 2007. Jennifer does not challenge the court's findings that termination was warranted on grounds that the children had been placed in court-ordered, out-of-home care within eighteen months of their return to her custody after a previous such placement. *See* A.R.S. § 8-533(B)(11). Nor does she challenge the court's finding that she had failed to remedy the circumstances that had caused the children to remain in such placements for more than fifteen months. *See* § 8-533(B)(8)(c). Her sole argument on appeal is that there was insufficient evidence to support the court's finding that severance of her parental rights was in her children's best interests.

**¶2** To terminate parental rights, a juvenile court must find the existence of at least one of the statutory grounds for termination enumerated in A.R.S. § 8-533(B) and "shall also consider the best interests of the child." *Id.* Although statutory grounds for termination must be proven by clear and convincing evidence, only a preponderance of the evidence is required to establish that severance will serve the child's best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless we can say as a matter of law that no reasonable person could find the essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App. 2009). We view the evidence in the light most favorable to upholding the court's order. *Id.* ¶ 10.

**¶3** In a lengthy, under-advisement ruling issued after a contested termination hearing, the juvenile court provided a detailed history of this and previous dependency proceedings involving Teresa, Stevie, and Darla, another of Jennifer's four daughters. In the course of these proceedings, Jennifer admitted her history of substance abuse, unstable employment, and unstable housing. She also admitted a history of domestic violence between her and Matthew C., Teresa's and Stevie's father. Before the first dependency petition was dismissed in August 2007, Jennifer had agreed to a crisis plan that required her to telephone the police if Matthew contacted her. Despite that agreement, however, Matthew had been residing in the family's home when this second proceeding was initiated two months later.

**¶4** In finding termination of Jennifer's parental rights was in Teresa's and Stevie's best interests, the juvenile court wrote:

> Teresa and Stevie have spent almost 85% of their lives in out-of-home care due to their mother's inability to protect them. [Jennifer] has been given every opportunity to reunify with her children including the time the first dependency was dismissed. [Jennifer] has been offered intensive services for over four years yet she has only skimmed the surface of the services and never benefitted. Permanency and stability for the children in the foreseeable future is unlikely with [Jennifer]. Teresa and Stevie deserve to have permanency in their lives. The children are adoptable with no special needs. The Court finds by a preponderance of the evidence that it is in the best interest of the children to sever [Jennifer]'s parental rights.

**¶5** Jennifer argues the juvenile court's finding that she had failed to benefit from services was "based upon what can only be assumed as being the court's 'final

straw' when allegations were made that Jennifer had had contact with Matthew." But although Jennifer implies this was a single contact, she does not dispute that evidence supported the court's findings that she was permitting the children to have regular contact with Matthew and had "used deceit to maintain [her] relationship" with him while telling Child Protective Services the relationship had ended. Nor does she challenge the court's summary of testimony provided by Jennifer's therapist who, according to the court, had opined that Jennifer "still had a need for therapy when she disengaged from individual therapy in 2009 because she never acknowledged her abusive relationship," and who had also reportedly explained the damaging "effects of domestic violence in a child's life."

**¶6** Similarly, we find no basis for Jennifer's assertion that the juvenile court failed to consider "the issue of the bond that the children have with their mother" and other siblings or Jennifer's abilities as a parent. The court expressly found that Jennifer "loves her daughters and possesses many parenting skills," but also "lacks . . . one of the most basic parenting skills—the ability to protect her children."

**¶7** We need not repeat the court's sound analysis in full here. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002), *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). To establish that terminating Jennifer's parental rights was in the children's best interests, Arizona Department of Economic Security was required to show the children "would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d 943,

945 (App. 2004); *see also, e.g., In re Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 6, 804 P.2d 730, 735 (1990) (to establish best interests, "petitioner might prove that there is a current adoptive plan for the child or that the child will be freed from an abusive parent") (emphasis omitted). The court's findings are amply supported by the evidence it has painstakingly described in its order. Indeed, Jennifer does not suggest the court's recitation of the facts is flawed; instead, she relies on other, more favorable evidence to argue for reversal of the court's decision. But we do not reweigh the evidence presented to the juvenile court. *Oscar O.*, 209 Ariz. 332, ¶ 14, 100 P.3d at 947. As the trier of fact in this proceeding, that court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Id.* ¶ 4.

**¶8** Accordingly, we affirm the juvenile court's termination order.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Judge